

EXECUTIVE SUMMARY - ENFORCEMENT MATTER
DOCKET NO.: 2008-0155-PST-E TCEQ ID: RN105381370 CASE NO.: 35297
RESPONDENT NAME: MIKE WILEY

Page 1 of 2

ORDER TYPE:		
<input checked="" type="checkbox"/> 1660 AGREED ORDER	<input type="checkbox"/> FINDINGS AGREED ORDER	<input type="checkbox"/> FINDINGS ORDER FOLLOWING SOAH HEARING
<input type="checkbox"/> FINDINGS DEFAULT ORDER	<input type="checkbox"/> SHUTDOWN ORDER	<input type="checkbox"/> IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER
<input type="checkbox"/> AMENDED ORDER	<input type="checkbox"/> EMERGENCY ORDER	
CASE TYPE:		
<input type="checkbox"/> AIR	<input type="checkbox"/> MULTI-MEDIA (check all that apply)	<input type="checkbox"/> INDUSTRIAL HAZARDOUS WASTE
<input type="checkbox"/> PUBLIC WATER SUPPLY	<input checked="" type="checkbox"/> PETROLEUM STORAGE TANKS	<input type="checkbox"/> OCCUPATIONAL CERTIFICATION
<input type="checkbox"/> WATER QUALITY	<input type="checkbox"/> SEWAGE SLUDGE	<input type="checkbox"/> UNDERGROUND INJECTION CONTROL
<input type="checkbox"/> MUNICIPAL SOLID WASTE	<input type="checkbox"/> RADIOACTIVE WASTE	<input type="checkbox"/> DRY CLEANER REGISTRATION
<p>SITE WHERE VIOLATIONS OCCURRED: 1211 North Margaret Street, Kirbyville, Jasper County</p> <p>TYPE OF OPERATION: former gasoline service station</p> <p>SMALL BUSINESS: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>OTHER SIGNIFICANT MATTERS: There are no complaints, however, this enforcement action was initiated by an Emergency Response request from the Kirbyville Fire Department. There is no record of additional pending enforcement actions regarding this facility location.</p> <p>INTERESTED PARTIES: No one other than the ED and the Respondent expressed an interest in this matter.</p> <p>COMMENTS RECEIVED: The <i>Texas Register</i> comment period expired September 21, 2009. No comments were received.</p> <p>CONTACTS AND MAILING LIST: TCEQ Attorney: Mr. Phillip M. Goodwin, P.G., Litigation Division, MC 175, (512) 239-0675 Ms. Lena Roberts, Litigation Division, MC 175, (512) 239-0019 TCEQ Enforcement Coordinator: Mr. Rajesh Acharya, Waste Enforcement Section, MC 128, (512) 239-0577 TCEQ Regional Contact: Mr. Derek Eades, Beaumont Regional Office, MC R-10, (409) 898-3838 Respondent: Mr. Mike Wiley, 206 Cascade Ct., Lufkin, Texas 75901 Respondent's Attorney: Not represented by counsel on this enforcement matter.</p>		

VIOLATION SUMMARY CHART:

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p>Type of Investigation:</p> <p> <input type="checkbox"/> Complaint <input type="checkbox"/> Routine <input type="checkbox"/> Enforcement Follow-up <input type="checkbox"/> Records Review <input checked="" type="checkbox"/> Emergency Response </p> <p>Date of Complaint Relating to this Case: December 1, 2007 (Emergency Response)</p> <p>Date of Investigation Relating to this Case: December 3, 2007</p> <p>Date of NOE Relating to this Case: January 18, 2008</p> <p>Background Facts: The EDPRP was filed on October 31, 2008. The Respondent filed an answer and the case was referred to SOAH. A preliminary hearing was held and the ED served Respondent with discovery requests. Settlement was achieved and a signed Agreed Order was received on July 22, 2009.</p> <p>Current Compliance Status: On December 18, 2007, the Region filed a Texas PST Incident Report reporting that this Facility contained leaking petroleum storage tanks (LPSTs). Soil samples indicate high levels of gasoline constituents and lead contamination. The Facility is not operational and the Respondent does not have a delivery certificate.</p> <p>PST:</p> <ol style="list-style-type: none"> Failed to register with the Commission a UST in existence on or after September 1, 1987 [30 TEX. ADMIN. CODE § 334.7(a)(1)]. Failed to permanently remove from service, no later than 60 days after the prescribed upgrade implementation date, one UST for which any applicable component of the system is not brought into timely compliance with the upgrade requirements [30 TEX. ADMIN. CODE § 334.47(a)(2)]. Failed to prevent an unauthorized discharge of gasoline. Specifically, gasoline was observed coming out of a vent pipe located on the south side of the building. Also, the investigator noted strong hydrocarbon odor emitting from the water line evacuation area. In addition, the investigator noted a slight sheen on the surface of the water in the evacuation area [30 TEX. ADMIN. CODE § 334.48(a)]. 	<p>Total Assessed: \$11,000</p> <p>Total Deferred: \$0</p> <p> <input type="checkbox"/> Expedited Order <input type="checkbox"/> Financial Inability to Pay <input type="checkbox"/> SEP Conditional Offset </p> <p>Total Paid/Due to General Revenue: \$500/\$10,500</p> <p>The Respondent paid \$500 of the administrative penalty. The remaining amount of \$10,500 shall be payable in 35 monthly payments of \$300 each.</p> <p>Site Compliance History Classification <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor </p> <p>Person Compliance History Classification <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor </p> <p>Major Source: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>Applicable Penalty Policy: September 2002</p>	<p>Ordering Provisions:</p> <p>The Respondent shall undertake the following technical requirements:</p> <ol style="list-style-type: none"> Within 30 days, permanently remove the UST system from service. Within 45 days, submit a properly completed UST registration form to the agency to reflect the current status of the UST system. Within 60 days, initiate an investigation to determine the source(s) and to characterize the nature, lateral and vertical extent, direction, rate of movement, volume, composition, and concentration of contaminants in soil and groundwater at the Facility. Within 180 days, complete a site investigation and submit a report which summarizes the findings to the Executive Director for review and approval. The report shall include a proposal for corrective action. Upon approval, Respondent shall implement the proposal in accordance with the approved implementation schedule. Within 190 days, submit written certification and include detailed supporting documentation to demonstrate compliance with these Ordering Provisions.



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision November 6, 2007

TCEQ

DATES	Assigned	22-Jan-2008	Screening	25-Jan-2008	EPA Due	
	PCW	25-Jan-2008				

RESPONDENT/FACILITY INFORMATION

Respondent	Mike Wiley		
Reg. Ent. Ref. No.	RN105381370		
Facility/Site Region	10-Beaumont	Major/Minor Source	Minor

CASE INFORMATION

Enf./Case ID No.	35297	No. of Violations	3
Docket No.	2008-0155-PST-E	Order Type	1660
Media Program(s)	Petroleum Storage Tank	Enf. Coordinator	Rajesh Acharya
Multi-Media		EC's Team	Enforcement Team 6
Admin. Penalty \$	Limit Minimum	\$0	Maximum
		\$10,000	

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties)

Subtotal 1

ADJUSTMENTS (+/-) TO SUBTOTAL 1

Subtotals 2-7 are obtained by multiplying the Total Base Penalty (Subtotal 1) by the indicated percentage.

Compliance History Enhancement Subtotals 2, 3, & 7 Notes Culpability Enhancement Subtotal 4 Notes Good Faith Effort to Comply Reduction Subtotal 5

	Before NOV	NOV to EDRP/Settlement Offer
Extraordinary	<input type="text"/>	<input type="text"/>
Ordinary	<input type="text"/>	<input type="text"/>
N/A	<input checked="" type="checkbox"/>	(mark with x)

Notes

Total EB Amounts	\$5,333	0% Enhancement*	Subtotal 6	\$0
Approx. Cost of Compliance	\$20,100	*Capped at the Total EB \$ Amount		

SUM OF SUBTOTALS 1-7

Final Subtotal

OTHER FACTORS AS JUSTICE MAY REQUIRE

 Adjustment

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes Final Penalty Amount

STATUTORY LIMIT ADJUSTMENT

Final Assessed Penalty

DEFERRAL

 Reduction Adjustment

Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes

PAYABLE PENALTY

Screening Date 25-Jan-2008

Docket No. 2008-0155-PST-E

PCW

Respondent Mike Wiley

Policy Revision 2 (September 2002)

Case ID No. 35297

PCW Revision November 6, 2007

Reg. Ent. Reference No. RN105381370

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Rajesh Acharya

Compliance History Worksheet

>> Compliance History Site Enhancement (Subtotal 2)

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written NOVs with same or similar violations as those in the current enforcement action (number of NOVs meeting criteria)	0	0%
	Other written NOVs	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability (number of orders meeting criteria)	0	0%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government (number of judgments or consent decrees meeting criteria)	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government (number of counts)	0	0%
Emissions	Chronic excessive emissions events (number of events)	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which notices were submitted)	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which violations were disclosed)	0	0%
Please Enter Yes or No			
Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

Adjustment Percentage (Subtotal 2) 0%

>> Repeat Violator (Subtotal 3)

No

Adjustment Percentage (Subtotal 3) 0%

>> Compliance History Person Classification (Subtotal 7)

Average Performer

Adjustment Percentage (Subtotal 7) 0%

>> Compliance History Summary

Compliance
History
Notes

No adjustment due to compliance history.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 0%

Screening Date 25-Jan-2008		Docket No. 2008-0155-PST-E		PCW	
Respondent Mike Wiley				<small>Policy Revision 2 (September 2002)</small>	
Case ID No. 35297				<small>PCW Revision November 6, 2007</small>	
Reg. Ent. Reference No. RN105381370					
Media [Statute] Petroleum Storage Tank					
Enf. Coordinator Rajesh Acharya					
Violation Number		<div style="border: 1px solid black; width: 100px; text-align: center;">1</div>			
Rule Cite(s)		<div style="border: 1px solid black; width: 100%; padding: 5px;">30 Tex. Admin. Code § 334.7(a)(1)</div>			
Violation Description		<div style="border: 1px solid black; width: 100%; padding: 5px;">Failed to register with the Commission an UST in existence on or after September 1, 1987.</div>			
Base Penalty					<div style="border: 1px solid black; width: 100px; text-align: center;">\$10,000</div>

>> Environmental, Property and Human Health Matrix

OR	Release	Harm			Percent
		Major	Moderate	Minor	
	Actual	<div style="border: 1px solid black; width: 100px; height: 20px;"></div>	<div style="border: 1px solid black; width: 100px; height: 20px;"></div>	<div style="border: 1px solid black; width: 100px; height: 20px;"></div>	
	Potential	<div style="border: 1px solid black; width: 100px; height: 20px;"></div>	<div style="border: 1px solid black; width: 100px; height: 20px;"></div>	<div style="border: 1px solid black; width: 100px; height: 20px;"></div>	

>> Programmatic Matrix

	Falsification	Major	Moderate	Minor	Percent
	<div style="border: 1px solid black; width: 100px; height: 20px;"></div>	<div style="border: 1px solid black; width: 100px; height: 20px; text-align: center;">x</div>	<div style="border: 1px solid black; width: 100px; height: 20px;"></div>	<div style="border: 1px solid black; width: 100px; height: 20px;"></div>	

Matrix Notes	<div style="border: 1px solid black; width: 100%; padding: 5px;">100% of the rule requirement was not met.</div>
---------------------	--

Adjustment	<div style="border: 1px solid black; width: 100px; text-align: center;">\$9,000</div>
	<div style="border: 1px solid black; width: 100px; text-align: center;">\$1,000</div>

Violation Events

Number of Violation Events	<div style="border: 1px solid black; width: 100px; text-align: center;">1</div>	Number of violation days	<div style="border: 1px solid black; width: 100px; text-align: center;">53</div>
-----------------------------------	---	---------------------------------	--

<small>mark only one with an x</small>	daily	<div style="border: 1px solid black; width: 100px; height: 20px;"></div>	Violation Base Penalty
	monthly	<div style="border: 1px solid black; width: 100px; height: 20px;"></div>	
	quarterly	<div style="border: 1px solid black; width: 100px; height: 20px;"></div>	
	semiannual	<div style="border: 1px solid black; width: 100px; height: 20px;"></div>	
	annual	<div style="border: 1px solid black; width: 100px; height: 20px;"></div>	
	single event	<div style="border: 1px solid black; width: 100px; height: 20px; text-align: center;">x</div>	

One single event is recommended based on documentation of the violation during the December 3, 2007 investigation.

Economic Benefit (EB) for this violation	Statutory Limit Test
Estimated EB Amount	Violation Final Penalty Total
<div style="border: 1px solid black; width: 100px; text-align: center;">\$4</div>	<div style="border: 1px solid black; width: 100px; text-align: center;">\$1,000</div>
This violation Final Assessed Penalty (adjusted for limits)	
<div style="border: 1px solid black; width: 100px; text-align: center;">\$1,000</div>	

Economic Benefit Worksheet

Respondent Mike Wiley
 Case ID No. 35297
 Reg. Ent. Reference No. RN105381370
 Media Petroleum Storage Tank
 Violation No. 1

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost No commas or \$	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
------------------	------------------------------	---------------	------------	-----	----------------	---------------	-----------

Delayed Costs

Equipment				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0
Engineering/construction				0.0	\$0	\$0	\$0
Land				0.0	\$0	n/a	\$0
Record Keeping System				0.0	\$0	n/a	\$0
Training/Sampling				0.0	\$0	n/a	\$0
Remediation/Disposal				0.0	\$0	n/a	\$0
Permit Costs				0.0	\$0	n/a	\$0
Other (as needed)	\$100	3-Dec-2007	7-Oct-2008	0.8	\$4	n/a	\$4

Notes for DELAYED costs

Estimated cost to properly complete and submit an UST registration form. Date required is the investigation date.
 Final Date is the estimated date of compliance.

Avoided Costs

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Disposal				0.0	\$0	\$0	\$0
Personnel				0.0	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.0	\$0	\$0	\$0
Supplies/equipment				0.0	\$0	\$0	\$0
Financial Assurance [2]				0.0	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$100

TOTAL

\$4

Screening Date 25-Jan-2008

Docket No. 2008-0155-PST-E

PCW

Respondent Mike Wiley

Policy Revision 2 (September 2002)

Case ID No. 35297

PCW Revision November 6, 2007

Reg. Ent. Reference No. RN105381370

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Rajesh Acharya

Violation Number 2

Rule Cite(s)

30 Tex. Admin. Code § 334.47(a)(2)

Violation Description

Failed to permanently remove from service, no later than 60 days after the prescribed upgrade implementation date, a UST system for which any applicable component of the system is not brought into timely compliance with the upgrade requirements.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential	x		

Percent 25%

>> Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent 0%

Matrix Notes

Human health or the environment will or could be exposed to pollutants which would exceed levels that are protective of human health or environmental receptors as a result of the violation.

Adjustment \$7,500

\$2,500

Violation Events

Number of Violation Events 2

53 Number of violation days

mark only one with an x	daily	
	monthly	x
	quarterly	
	semiannual	
	annual	
	single event	

Violation Base Penalty \$5,000

Two monthly events are recommended based on documentation of the violation during the December 3, 2007 investigation to the January 25, 2008 screening date.

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$4,879

Violation Final Penalty Total \$5,000

This violation Final Assessed Penalty (adjusted for limits) \$5,000

Economic Benefit Worksheet

Respondent Mike Wiley
Case ID No. 35297
Reg. Ent. Reference No. RN105381370
Media Petroleum Storage Tank
Violation No. 2

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
No commas or \$							

Delayed Costs

Equipment				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0
Engineering/construction				0.0	\$0	\$0	\$0
Land				0.0	\$0	n/a	\$0
Record Keeping System				0.0	\$0	n/a	\$0
Training/Sampling				0.0	\$0	n/a	\$0
Remediation/Disposal				0.0	\$0	n/a	\$0
Permit Costs				0.0	\$0	n/a	\$0
Other (as needed)	\$10,000	22-Dec-1998	22-Sep-2008	9.8	\$4,879	n/a	\$4,879

Notes for DELAYED costs

Estimated cost to permanently remove the UST system from service. Date Required is the date the Respondent was required to upgrade the UST system. Final Date is the estimated date of compliance.

Avoided Costs

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Disposal				0.0	\$0	\$0	\$0
Personnel				0.0	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.0	\$0	\$0	\$0
Supplies/equipment				0.0	\$0	\$0	\$0
Financial Assurance [2]				0.0	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$10,000

TOTAL

\$4,879

Screening Date 25-Jan-2008		Docket No. 2008-0155-PST-E		PCW									
Respondent Mike Wiley		<i>Policy Revision 2 (September 2002)</i>											
Case ID No. 35297		<i>PCW Revision November 6, 2007</i>											
Reg. Ent. Reference No. RN105381370													
Media [Statute] Petroleum Storage Tank													
Enf. Coordinator Rajesh Acharya													
Violation Number	<div style="border: 1px solid black; padding: 2px;">3</div>												
Rule Cite(s)	<div style="border: 1px solid black; padding: 2px;">30 Tex. Admin. Code § 334.48(a)</div>												
Violation Description	<div style="border: 1px solid black; padding: 5px;"> <p>Failed to prevent an unauthorized discharge of gasoline. Specifically, gasoline was observed coming out of a vent pipe located on the south side of the building. Also, the investigator noted strong hydrocarbon odor emitting from the water line excavation area. In addition, the investigator noted a slight sheen on the surface of the water in the excavation area.</p> </div>												
			Base Penalty	<div style="border: 1px solid black; padding: 2px;">\$10,000</div>									
>> Environmental, Property and Human Health Matrix													
OR	<table border="1" style="margin: auto;"> <tr> <td></td> <th colspan="3">Harm</th> </tr> <tr> <th>Release</th> <th>Major</th> <th>Moderate</th> <th>Minor</th> </tr> </table>				Harm			Release	Major	Moderate	Minor	Percent	25%
		Harm											
	Release	Major	Moderate	Minor									
Actual		x											
Potential													
>> Programmatic Matrix													
	<table border="1" style="margin: auto;"> <tr> <td></td> <th>Major</th> <th>Moderate</th> <th>Minor</th> </tr> </table>				Major	Moderate	Minor	Percent	0%				
	Major	Moderate	Minor										
Falsification													
Matrix Notes	<p>Human health or the environment has been exposed to significant amounts of pollutants which do not exceed levels that are protective of human health or environmental receptors as a result of the violation.</p>												
			Adjustment	<div style="border: 1px solid black; padding: 2px;">\$7,500</div>									
				<div style="border: 1px solid black; padding: 2px;">\$2,500</div>									
Violation Events													
Number of Violation Events		<div style="border: 1px solid black; padding: 2px;">2</div>	<div style="border: 1px solid black; padding: 2px;">57</div>	Number of violation days									
mark only one with an x	daily			Violation Base Penalty	\$5,000								
	monthly	x											
	quarterly												
	semiannual												
	annual												
single event													
<p>Two monthly events are recommended from the release discovery date of November 29, 2007 to the screening date January 25, 2008.</p>													
Economic Benefit (EB) for this violation			Statutory Limit Test										
Estimated EB Amount		<div style="border: 1px solid black; padding: 2px;">\$449</div>	Violation Final Penalty Total		<div style="border: 1px solid black; padding: 2px;">\$5,000</div>								
This violation Final Assessed Penalty (adjusted for limits)					<div style="border: 1px solid black; padding: 2px;">\$5,000</div>								

Economic Benefit Worksheet

Respondent Mike Wiley
Case ID No. 35297
Reg. Ent. Reference No. RN105381370
Media Petroleum Storage Tank
Violation No. 3

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
------------------	-----------	---------------	------------	-----	----------------	---------------	-----------

No commas or \$

Delayed Costs

Equipment				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0
Engineering/construction				0.0	\$0	\$0	\$0
Land				0.0	\$0	n/a	\$0
Record Keeping System				0.0	\$0	n/a	\$0
Training/Sampling				0.0	\$0	n/a	\$0
Remediation/Disposal	\$10,000	29-Nov-2007	22-Oct-2008	0.9	\$449	n/a	\$449
Permit Costs				0.0	\$0	n/a	\$0
Other (as needed)				0.0	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost to properly clean up and dispose of contaminated soils and groundwater. Date required is the date release was discovered. Final Date is the estimated date of compliance.

Avoided Costs

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Disposal				0.0	\$0	\$0	\$0
Personnel				0.0	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.0	\$0	\$0	\$0
Supplies/equipment				0.0	\$0	\$0	\$0
Financial Assurance [2]				0.0	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$10,000

TOTAL

\$449

Compliance History

Customer/Respondent/Owner-Operator:	CN603273426	WILEY, MIKE	Classification: AVERAGE	Rating: 3.01
Regulated Entity:	RN105381370	1211 N MARGARET ST	Classification: AVERAGE BY DEFAULT	Site Rating: 3.01
ID Number(s):				
Location:	1211 N MARGARET ST, KIRBYVILLE, TX, 75956		Rating Date: 9/1/2007 Repeat Violator: NO	
TCEQ Region:	REGION 10 - BEAUMONT			
Date Compliance History Prepared:	February 14, 2008			
Agency Decision Requiring Compliance History:	Enforcement			
Compliance Period:	February 13, 2003 to February 14, 2008			
TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History				
Name:	Rajesh Acharya		Phone:	(512) 239-0577

Site Compliance History Components

- | | |
|--|-----|
| 1. Has the site been in existence and/or operation for the full five year compliance period? | Yes |
| 2. Has there been a (known) change in ownership of the site during the compliance period? | No |
| 3. If Yes, who is the current owner? | N/A |
| 4. If Yes, who was/were the prior owner(s)? | N/A |
| 5. When did the change(s) in ownership occur? | N/A |

Components (Multimedia) for the Site :

- | | |
|------------------------|---|
| A. | Final Enforcement Orders, court judgements, and consent decrees of the state of Texas and the federal government. |
| | N/A |
| B. | Any criminal convictions of the state of Texas and the federal government. |
| | N/A |
| C. | Chronic excessive emissions events. |
| | N/A |
| D. | The approval dates of investigations. (CCEDS Inv. Track. No.) |
| | 1 01/18/2008 (612424) |
| E. | Written notices of violations (NOV). (CCEDS Inv. Track. No.) |
| F. | Environmental audits. |
| | N/A |
| G. | Type of environmental management systems (EMSs). |
| | N/A |
| H. | Voluntary on-site compliance assessment dates. |
| | N/A |
| I. | Participation in a voluntary pollution reduction program. |
| | N/A |
| J. | Early compliance. |
| | N/A |
| Sites Outside of Texas | |
| | N/A |

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**IN THE MATTER OF AN
ENFORCEMENT ACTION
CONCERNING
MIKE WILEY;
RN105381370**

§
§
§
§
§

**BEFORE THE

TEXAS COMMISSION ON

ENVIRONMENTAL QUALITY**

AGREED ORDER DOCKET NO. 2008-0155-PST-E

I. JURISDICTION AND STIPULATIONS

At its _____ agenda, the Texas Commission on Environmental Quality ("Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding Mike Wiley under the authority of TEX. WATER CODE chs. 7 and 26. The Executive Director of the TCEQ, represented by the Litigation Division, and Mike Wiley appear before the Commission and together stipulate that:

1. Mike Wiley owns property that was formerly used as a gasoline service station located at 1211 North Margaret Street, Kirbyville, Jasper County, Texas (the "Facility").
2. This Agreed Order is entered into pursuant to TEX. WATER CODE §§ 7.051 and 7.070. The Commission has jurisdiction of this matter pursuant to TEX. WATER CODE § 5.013 because it alleges violations of TEX. WATER CODE ch. 26 and TCEQ rules.
3. The Commission and Mike Wiley agree that the Commission has jurisdiction to enter this Agreed Order, and that Mike Wiley is subject to the Commission's jurisdiction.
4. Mike Wiley received notice of the violations alleged in Section II ("Allegations") on or about January 23, 2008.
5. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by Mike Wiley of any violation alleged in Section II ("Allegations"), nor of any statute or rule.
6. An administrative penalty in the amount of eleven thousand dollars (\$11,000.00) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). Mike

Wiley paid five hundred dollars (\$500.00) of the administrative penalty. The remaining amount of ten thousand five hundred dollars (\$10,500.00) of the administrative penalty shall be payable in 35 monthly payments of three hundred dollars (\$300.00) each. The first monthly payment shall be paid within 30 days after the effective date of this Agreed Order. The subsequent payments shall be paid not later than 30 days following the due date of the previous payment. If Mike Wiley fails to timely and satisfactorily comply with the payment requirements of this Agreed Order, including the payment schedule, the Executive Director may, at his option, accelerate the maturity of the remaining installments, in which event the unpaid balance shall become immediately due and payable without demand or notice. In addition, Mike Wiley's failure to meet the payment schedule of this Agreed Order constitutes the failure by Mike Wiley to timely and satisfactorily comply with all of the terms of this Agreed Order

7. Any notice and procedures which might otherwise be authorized or required in this action are waived in the interest of a more timely resolution of the matter.
8. The Executive Director of the TCEQ and Mike Wiley agreed on a settlement of the matters alleged in this enforcement action, subject to the approval of the Commission.
9. The Executive Director may, without further notice or hearing, refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings if the Executive Director determines that Mike Wiley has not complied with one or more of the terms or conditions in this Agreed Order.
10. This Agreed Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Agreed Order, whichever is later.
11. The provisions of this Agreed Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Agreed Order unenforceable, the remaining provisions shall be valid and enforceable.

II. ALLEGATIONS

1. During an investigation conducted from December 3, 2007, a TCEQ Beaumont Regional Office investigator documented that Mike Wiley violated:
 - a. 30 TEX. ADMIN. CODE § 334.7(a)(1) by failing to register with the Commission a UST in existence on or after September 1, 1987;

- b. 30 TEX. ADMIN. CODE § 334.47(a)(2) by failing to permanently remove from service, no later than 60 days after the prescribed upgrade implementation date, one UST for which any applicable component of the system is not brought into timely compliance with the upgrade requirements; and
- c. 30 TEX. ADMIN. CODE § 334.48(a) by failing to prevent an unauthorized discharge of gasoline. Specifically, gasoline was observed coming out of a vent pipe located on the south side of the building. Also, the investigator noted strong hydrocarbon odor emitting from the water line evacuation area. In addition, the investigator noted a slight sheen on the surface of the water in the evacuation area.

III. DENIALS

Mike Wiley generally denies each allegation in Section II ("Allegations").

IV. ORDERING PROVISIONS

- 1. It is, therefore, ordered by the TCEQ that Mike Wiley pay an administrative penalty as set forth in Section I, Paragraph 6 above. The payment of this administrative penalty and Mike Wiley's compliance with all the terms and conditions set forth in this Agreed Order resolve only the allegations in Section II. The Commission shall not be constrained in any manner from considering or requiring corrective action or penalties for violations which are not raised here. Administrative penalty payments shall be made payable to "Texas Commission on Environmental Quality" and shall be sent with the notation "Re: Mike Wiley, Docket No. 2008-0155-PST-E" to:

Financial Administration Division, Revenues Section
Attention: Cashier's Office, MC 214
Texas Commission on Environmental Quality
P.O. Box 13088
Austin, Texas 78711-3088

- 2. Mike Wiley shall undertake the following technical requirements:
 - a. Within 30 days after the effective date of this Agreed Order, Mike Wiley shall permanently remove the UST system from service, in accordance with 30 TEX. ADMIN. CODE § 334.55.

- b. Within 45 days after the effective date of this Agreed Order, Mike Wiley shall submit a properly completed UST registration form to the agency to reflect the current status of the UST system, in accordance with 30 TEX. ADMIN. CODE § 334.7, to:

Registration and Reporting Section
Permitting & Remediation Support Division, MC 138
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

- c. Within 60 days after the effective date of this Agreed Order, Mike Wiley shall initiate an investigation to determine the source(s) and to characterize the nature, lateral and vertical extent, direction, rate of movement, volume, composition, and concentration of contaminants in soil and groundwater at the Facility (the "Site Investigation") in accordance with 30 TEX. ADMIN. CODE ch. 334, subchs. D and G (relating to Release Reporting and Corrective Action, and Target Concentration Criteria, respectively);
- d. Within 180 days after the effective date of this Agreed Order, Mike Wiley shall complete the Site Investigation and submit a report which summarizes the findings of the Site Investigation (the "Site Investigation Report") to the Executive Director for review and approval. The Site Investigation Report shall include a proposal for corrective action. The proposal shall be submitted in accordance with 30 TEX. ADMIN. CODE ch. 334, subchs. D and G (relating to Release Reporting and Corrective Action, and Target Concentration Criteria, respectively) or other applicable guidance approved by the Executive Director. Upon review, possible modification, and approval by the Executive Director, implement the proposal in accordance with the approved implementation schedule.

If, after receipt of the Site Investigation Report, the Executive Director determines that additional investigation is necessary, Mike Wiley shall implement such investigation and report the results to the Executive Director within the time-frame specified in the request.

If the Executive Director determines that additional information or additional actions are required to ensure that adequate remediation of all contaminated areas has been completed, Mike Wiley shall submit the additional information to the Executive Director, and perform the additional actions within the time-frame specified in the request; and

- e. Within 190 days after the effective date of this Agreed Order, Mike Wiley shall submit written certification as described below, and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision Nos. 1.a. through 1.c. The certification shall be notarized by a State of Texas Notary Public and include the following certification language:

"I certify under penalty of law that I have personally examined and am familiar with the information submitted and all attached documents, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

The certification shall be submitted to:

Order Compliance Team
Enforcement Division, MC 149A
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

with a copy to:

Derek Eades, Waste Section Manager
Beaumont Regional Office
Texas Commission on Environmental Quality
3870 Eastex Freeway
Beaumont, Texas 77703-1830

3. The provisions of this Agreed Order shall apply to and be binding upon Mike Wiley. Mike Wiley is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Facility operations referenced in this Agreed Order.
4. If Mike Wiley fails to comply with any of the Ordering Provisions in this Agreed Order within the prescribed schedules, and that failure is caused solely by an act of God, war, strike, riot, or other catastrophe, Mike Wiley's failure to comply is not a violation of this Agreed Order. Mike Wiley shall have the burden of establishing to the Executive Director's

satisfaction that such an event has occurred. Mike Wiley shall notify the Executive Director within seven days after Mike Wiley becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.

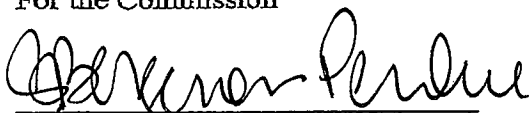
5. The Executive Director may grant an extension of any deadline in this Agreed Order or in any plan, report, or other document submitted pursuant to this Agreed Order, upon a written and substantiated showing of good cause. All requests for extensions by Mike Wiley shall be made in writing to the Executive Director. Extensions are not effective until Mike Wiley receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
6. This Agreed Order, issued by the Commission, shall not be admissible against Mike Wiley in a civil proceeding, unless the proceeding is brought by the OAG to: (1) enforce the terms of this Agreed Order; or (2) pursue violations of a statute within the Commission's jurisdiction, or of a rule adopted or an order or permit issued by the Commission under such a statute.
7. This Agreed Order may be executed in multiple counterparts, which together shall constitute a single original instrument. Any executed signature page to this Agreed Order may be transmitted by facsimile transmission to the other parties, which shall constitute an original signature for all purposes.
8. Under 30 TEX. ADMIN. CODE § 70.10(b) and TEX. GOV'T CODE § 2001.142, the effective date of this Agreed Order is the date of hand-delivery of the Order to Mike Wiley, or three days after the date on which the Commission mails notice of the Order to Mike Wiley, whichever is earlier. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties.

Mike Wiley
Docket No. 2008-0155-PST-E
Page 7

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission:



For the Executive Director

8/20/2009

Date

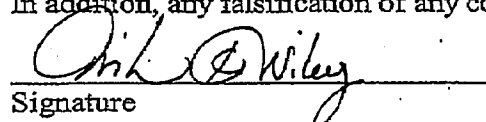
I, the undersigned, have read and understand the attached Agreed Order. I represent that I am authorized to agree to the attached Agreed Order on behalf of the entity, if any, indicated below my signature, and I do agree to the terms and conditions specified therein. I further acknowledge that the TCEQ, in accepting payment for the penalty amount, is materially relying on such representation.

I also understand that my failure to comply with the Ordering Provisions, if any, in this order and/or my failure to timely pay the penalty amount, may result in:

- A negative impact on Mike Wiley's compliance history;
- Greater scrutiny of any permit applications submitted by Mike Wiley;
- Referral of this case to the Attorney General's office for contempt, injunctive relief, additional penalties, and/or attorney fees, or to a collection agency;
- Increased penalties in any future enforcement actions against Mike Wiley;
- Automatic referral to the Attorney General's Office of any future enforcement actions against Mike Wiley; and
- TCEQ seeking other relief as authorized by law.

In addition, any falsification of any compliance documents may result in criminal prosecution.

Signature



Date

7/22/09

Mike Wiley
Name (Printed or typed)

Title

